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DISCUSSION PAPER

87.C.2

EQUAL PAY FOR WORK OF EQUAL VALUE LEGISLATION IN CANADA: AN ANALYSIS

by

Heather E. Conway

November 1987

Studies in Social Policy
275 Slater St., 5th Floor
Ottawa, Ontario K1P 5H9

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87.C.2

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by

Heather E. Conway

November 1987

The research for this study was completed in September 1987.

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Foreword

The purpose of this paper is twofold: first, to provide an overview and analysis of existing pay equity legislation in Canada; and second, to provide some insight into the problems and issues related to both its design and its implementation. To these ends, a contextual background will be provided, indicating the source of the impetus for legislated pay equity: namely, the persistence both of the wage gap and of occupational segregation. The rationale behind legislated equal pay for work of equal value will be highlighted, and an examination and analysis of pay equity legislation by jurisdiction will be undertaken.

The paper includes a brief assessment of the role of trade unions in the area of pay equity, including their willingness to use collective bargaining to pursue equal pay for work of equal value for their female membership. (Hereafter, the term 'equal pay for work of equal value' is used interchangeably with 'equal value' and 'pay equity'.)

A survey of job evaluation techniques must be part of any discussion of pay equity; here the objective is to highlight both the complexities involved in the design of job evaluation schemes and the critical importance they assume in the implementation of equal value.

The concerns of women's groups and employee representatives, as well as those of employers, will be critically reviewed and assessed. Finally, the conclusion will serve to indicate some directions for further research in the area of pay equity.

The paper should prove useful to both opponents and proponents of equal pay for work of equal value. While every effort has been made to provide current information, interested parties should be aware that new directions in both the scope and the nature of pay equity legislation occur regularly.

Equal Pay for Work of Equal Value Legislation in Canada: An Analysis

Introduction

The concept of equal pay for work of equal value is not new. It is at least as old as the children's story about the farmer who is challenged by his wife to exchange duties with her for one day, so that he might better understand the real value of the household tasks she performs. In recent years, however, legislated pay equity has become one of a number of policy options available to governments to improve the economic status and, perhaps, the social status of working women.

Equal pay for work of equal value is distinguished from equal pay for equal work by its attempt to measure objectively the differing demands made on workers in the performance of different jobs. In contrast, equal pay for equal work implies that men and women who perform the same job must be paid the same wage.

That equal value has entered mainstream consciousness in the last 10 years or so is a consequence of three major factors: first, the increased political power of women, as evidenced by the women's movement of the 1960s and 1970s. A second factor has been the relatively recent and significant rise in female labour market participation rates. In 1960 the female participation rate in Canada was 30.1 per cent, in 1970 it was 38.3 per cent, in 1980 it had risen to 50.4 per cent, and by 1986, 55.1 per cent of women were working (Statistics Canada 1984; Statistics Canada 1986). Finally, and partially as a result of the factors just mentioned, it has become increasingly evident to both women and governments that equal pay for equal work legislation has exhausted its potential to reduce the earnings gap between men and women any further.

Equal pay for equal work legislation has existed in every jurisdiction in Canada for some time, most jurisdictions having adopted it in the 1950s (see Table 1 for summary). If one examines the data comparing the average earnings of women and men from 1967 to 1985, it is quickly apparent that a significant gap in average earnings has persisted, despite the legislation (see Table 2).

Although women's average earnings did improve over the 1967-1985 period, it is difficult, if not impossible, to isolate legislation as the major factor behind that improvement as compared to the impact of, say, the women's movement generally, the greater numbers of women with post-secondary education, the entrance of some women into non-traditional occupations, or the increased participation rate of women in trade unions. It is probable that equal pay for equal work legislation did have some positive effect on women's earnings, but the fact remains that after approximately 30 years of equal pay for equal work legislation in most jurisdictions in Canada, women still earn, on average, only two-thirds of men's average earnings. Why is this so?

Table 1: Canadian Equal Pay Legislation by Jurisdiction, 1987

Jurisdiction	Date of Law	Concept of Equal[1]	Composite Allowed[2]	Exempt Groups[3]	Same Company in Different Locations[4]	Agency Initiates Investigation
Newfoundland	1971	Similar	Yes	Yes	Yes	Yes
Prince Edward Island	1959	Substantially the same (Public sector pay equity legislation soon to be debated)	Yes	Yes	N.A.	No
Nova Scotia	1957	Substantially the same	Yes	Yes	Yes	No
New Brunswick	1961	N.A.	Yes	No	Yes	No
Quebec	1964 1975	Same Equal value	Yes	No	Yes	Rare
Ontario	1951	Substantially the same	No	No	Yes	Yes
	1987	Equal value	Yes	Yes	Yes	No
Manitoba	1956	Substantially the same	No	No	No	Rare
	1985	Equal value (public sector only)*	Yes	Yes	Yes	No
Saskatchewan	1952	Similar	No	Yes	No	Yes
Alberta	1957	Substantially similar	Yes	Yes	No	No
British Columbia	1953	Substantially similar	No	No	Yes	Rare
Federal	1956	Substantially the same	No	No	Yes	No
	1978	Equal value	Yes	No	Yes	No

Notes:

1. There are a number of ways to define the way in which work may be determined to be equal:
   Same - the identical job must be performed to qualify for equal pay.
   Substantially the same - as above, with minor variations in task(s).
   Similar - as above, with greater variation of task(s) permitted.
   Substantially similar - as similar, but with even greater variation permitted.
   Equal value - different jobs that have been determined to be equally demanding over a range of criteria.
2. **Composite Allowed** - i.e., components of one job may be traded off against components of another so that, for example, two jobs may be rated equally if a low level of skill is compensated for by a high level of responsibility and the composite scores are equal.
3. **Exempt Groups** - "yes" implies that some groups are exempt, e.g., domestic workers.
4. **Same Company in Different Locations** - "yes" implies that comparisons can be made within the same company at different locations.

* Private sector legislation planned.

N.A. Not available.

Source: Gunderson 1985, updated by the author.

Table 2: Women's Average Earnings as a Percentage of Men's, 1967 - 1985

Year	All Earners	Earners working full year, full-time
1967	46.1%	58.4%
1971	46.8	59.6
1975	48.0	60.1
1977	50.7	62.0
1979	51.2	63.3
1981	53.2	63.6
1982	54.6	64.0
1984	57.1	65.5
1985	55.9	64.9

Source: Statistics Canada 1987.

1. Occupational Segregation

By and large, equal pay for equal work legislation fails to address the problem of occupational segregation, that is, the gap between the kinds of jobs performed by men and those performed by women. Where men and women perform the 'same' or 'substantially similar' work, equal pay for equal work legislation does afford women protection from wage discrimination. But men and women do not generally perform the same or substantially similar work; therefore, the evident limitations of the legislation are critical. To benefit from conventional equal pay laws, a woman must be able to point to a man who is doing basically the same job as she is but is better paid. It should be noted, however, that Judge Rosalie Abella has reported that "More recently, the courts have interpreted the legislation as allowing comparison of similar job function as well as actual job description" (Abella 1984, 236).

Unlike equal pay for the same or similar work, the equal value concept recognizes that occupational segregation persists and that the concomitant undervaluation of 'women's' work is responsible for a large part of the earnings gap.

A number of other factors have been cited as contributing to the earnings gap. A research study prepared for the Macdonald Commission concluded that only about half the earnings gap could be attributed to discriminatory factors. The remainder was thought to be attributable to factors related to productivity, such as education, age and training (Riddell 1985, 60-61). It should be noted, however, that societal forces operate to affect women's choices regarding their education, their attachment to the labour force and their ability to enter traditionally 'male' professions: "... different choices of types of education, time and effort devoted to career advancement, and so on may result from differential sharing of household tasks, sexual stereotyping and other factors" (ibid.).

That occupational segregation persists in Canada is not in dispute. In spite of the women's movement, in spite of the rapid rate at which women have entered the work force and in spite of women's educational advancement, 60 per cent of women work in only 20 of the 500 job categories monitored by Statistics Canada – categories that cover occupations ranging

from clerical and service jobs to managerial and professional jobs (Labour Canada 1986b, 3). Within the range of 20 or so job categories, women are represented much more heavily in the clerical and service sectors than in the managerial and professional sectors. In 1984, women accounted for 79.1 per cent of the total labour force in clerical work, and 31.9 per cent in the managerial and administrative sectors (Labour Canada 1986b, 19). Obviously, since women represent only 42.2 per cent of the labour force as a whole, they are over-represented in traditionally low-paying occupations and under-represented in predominantly high-paying occupations (ibid.). A further comparison of the average earnings of women and men in these occupational groups reveals that even when women make up the majority of workers in a given field, their average level of remuneration is dramatically lower than that of men in the same field (see Table 3). Thus, there is no dispute over the fact that men and women are segregated by the work that they do. There are, however, varying opinions as to how and why occupational segregation has persisted.

Table 3: Earnings of Men and Women by Selected Occupational Groups, 1985

Occupational Groups	Managerial and Administrative		Teaching		Medicine and Health		Clerical	
Earnings Group	**Men %**	**Women %**	**Men %**	**Women %**	**Men %**	**Women %**	**Men %**	**Women %**
$ 000 - 7,999	5.6	14.0	8.8	23.1	7.6	17.8	17.7	28.8
$ 8,000 - 14,999	8.5	21.2	6.6	13.9	8.9	21.8	15.2	26.8
$15,000 - 29,999	28.0	45.3	19.1	31.9	36.4	47.9	44.0	41.3
$30,000 and over	57.8	19.5	65.5	31.1	47.0	12.6	23.1	3.0
Average Earnings ($)	35,799	20,651	32,743	21,538	37,254	18,054	20,789	13,601

Source: Extracted from Statistics Canada 1987, 32-33.

The fact that there are different theories about why occupational segregation persists is important, because policies designed to 'cure' the problem have been, and will continue to be, shaped by the explanation policy makers accept for the probable cause of the problem. This discussion is concerned mainly with legislation designed to affect one aspect of occupational segregation (i.e., the fact that 'women's work' receives 'women's wages' which are invariably lower than 'men's wages'), rather than with policies designed to attack systemic occupational segregation. The examination of the various theories regarding its causes will therefore be confined to describing them and will not involve an analysis of the merits or flaws in each.

In a sense, the recent push for equal value can be seen as an attempt to circumvent the occupational segregation debate. The rationale behind equal value legislation is rooted in a fundamental belief that as long as women remain in traditional 'women's jobs', the earnings gap will persist because women's jobs are undervalued. Equal value legislation is not designed to reclassify women's jobs as men's jobs, nor does it encourage or reward women for entering men's jobs; it is designed to re-value the work women already do. In short, the pay

issue is dealt with, but the segregation issue is not. The essence of the rationale was summed up nicely in the Abella Report:

> . . . if the crucial importance of women's jobs in our society suggests that these jobs are undervalued only because they are held by women, why should women be asked to change their choices, rather than asking society to change how it rewards those choices? (Abella 1984, 249)

The logic behind this approach to women's low pay will be readily apparent following the brief survey of theories regarding the causes of occupational segregation. The insight into the apparent logic of the equal value approach should also be borne in mind when the arguments for and against its implementation are addressed later in the discussion.

2. Alternative Theories of Occupational Segregation*

The explanations for labour market discrimination and occupational segregation can be grouped into three broad categories: (1) neoclassical competitive theories, (2) non-competitive theories, and (3) non-labour market constraints (Gunderson 1985).

Neoclassical Competitive Theories

Neoclassical theories of discrimination are distinguished by being grounded in the school of economic analysis that maintains that individuals and firms are optimizing agents in a free marketplace. That is, employers, workers and customers are all exercising preferences and trying to maximize their returns. As Gunderson points out, neoclassical models recognize that there may exist discriminatory tastes that reveal themselves in "a preference for hiring, working with, or consuming from different types of labour." Regardless of the source of the preference, it will result in a reduced demand for the less preferred workers, and thus reduce their wages and employment opportunities. Firms may not replace their preferred workers with cheaper workers immediately (i.e., in order to maximize their return on labour), because the discriminatory preferences that initially led to a dual labour structure may persist, and it may prove more disruptive to replace preferred workers than to continue to discriminate.

Thus, in this model, discriminatory outcomes may persist for some time even when there are no underlying productivity differences, and there are positive wage differentials to militate against persistent underutilization of the cheaper labour pool.

This type of analysis has been broadened to include the notion that because women's preferred choices place them in a more limited number of occupations, overcrowding occurs in these occupations and drives wages down (i.e., excess supply in the face of relatively inelastic demand lowers the 'price' of women's labour).

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* For a more detailed view of the theories presented here, see Morley Gunderson and Frank Reid (1981).

The policy implications of this explanation of discrimination are clear. First, intervention in the labour market is required to make the exercise of discriminatory preferences sub-optimal. An example of this kind of policy is the denial of government contracts to employers who do not employ a specified proportion of women or other targeted groups. Or, intervention may be required to encourage women to make wider occupational choices. Affirmative action programs and training for non-traditional jobs, for example, can reduce crowding in women's traditional occupations and increase crowding in men's traditional fields, thus leading to a reduction in the pay gap.

Non-Competitive Theories

Non-competitive theories to explain occupational segregation have arisen because the reluctance of employers to hire certain groups of workers, even where hiring them would be consistent with competitive economic behaviour, appears to be irrational behaviour that cannot be explained adequately by conventional economic theory.

Dual or segmented labour market theorists believe that the market is made up of two groups of workers that do not compete with each other. These workers are active in two sectors: the primary or core sector and the secondary or peripheral sector. The primary labour market is characterized by high wages, good working conditions, job security, high upward mobility and training opportunities. The secondary labour market is characterized by low wages, poor working conditions, little job security, low mobility and a lack of fringe benefits of any sort. There is little mobility between sectors, and once they enter the secondary sector, workers acquire the traits associated with that market – high rates of turnover and absenteeism, poor work habits, and so on. This in turn encourages low wages and reinforces the already low mobility of secondary workers.

Radical theorists take dual labour market theory a step further. They postulate that firms consciously maintain separate labour markets as a means of controlling workers, believing that as long as workers are pitted against one another, their potential power is diffuse and therefore manageable.

Radical feminist theorists have widened labour market segmentation theory to include the notion that there is mutual accommodation between capitalism and patriarchy, which serves to sustain occupational segregation and the concomitant subordination and dependence of women (Eisenstein 1979). They also assert the primacy of patriarchy in the creation of labour divisions, first, within the family, and second, in aid of capitalist development. As Eisenstein states in her introduction to *Capitalist Patriarchy and the Case for Socialist Feminism*:

> A sexual division of labour and society that defines people's activity, purposes, goals, desires and dreams according to their biological sex is at the base of patriarchy and capitalism. It divides men and women into their respective hierarchical sex roles and structures their related duties in the family domain and within the economy (Eisenstein 1979, 27).

The argument behind this theory runs as follows: as long as women are paid lower wages than men and their access to secure, high-paying jobs is restricted, women will be dependent on men, and so will cater to their needs.

Non-Labour Market Constraints

Some theorists believe that constraints not related to the labour market are more important in explaining discrimination and segregation than are the competitive supply and demand aspects of the labour market or the conscious maintenance of dual labour markets. These constraints include such social phenomena as sex stereotyping, which "in classrooms and textbooks may foster traits that carry over into labour market behaviour: competitiveness and skills on the part of males, passiveness and domesticity on the part of females." (Gunderson 1985, 225). The fact that women continue to bear primary responsibility for household tasks and the care of children may also affect their choices in the labour market. These restricting factors are compounded by other non-labour market constraints such as inadequate child care. In short, women's so-called 'preferences' which, on the surface, appear to indicate a desire for fewer hours and less responsibility and imply a lower level of commitment, may actually be a result of the difficulties inherent in maintaining two jobs.

The point of these brief remarks is not to provide a comprehensive review of the large and growing literature on the structure of labour markets or the possible explanations for persistent pay differentials, but simply to offer a reminder that there are many possible theories and alternative explanations. Attacking the problem at its source, however, is likely to be a slow process no matter which of the many explanations of the underlying mechanisms is adopted.

Having surveyed very briefly some of the possible explanations for occupational segregation, it is clear that regardless of which theory one accepts, the potential policy options for countering the problem share a common drawback – the length of time it will take to see results. Changing preferences, encouraging mobility, eliminating patriarchy, removing sexism from schools and providing adequate child care, for example, will probably not be achieved for a long time. By comparison, legislation to improve pay for women can be and has been implemented relatively quickly. The focus of the discussion will now turn to an examination of legislation concerning equal pay for work of equal value in Canada.

Legislation - An Overview

1. International Commitments

In 1919, the International Labour Organization (ILO) made the concept of equal pay for work of equal value one of its founding principles. In 1951, the ILO passed Convention 100 and Recommendation 90 (Cornish 1986, 9). Article 2 of Convention 100 reads as follows:

> Each member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, insofar as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

In 1972, Canada ratified Convention 100, thus binding the country to apply the principle of equal pay for work of equal value. In 1976 Canada acceded to the United Nations International Covenant on Economic, Social and Cultural Rights, which contains (in Article 7) a commitment to equal remuneration for work of equal value. Finally, in 1981, Canada ratified the United Nations Convention on the Elimination of all Forms of Discrimination against women (Abella 1984, 239-241). Article II(1) of this Convention reads as follows:

> Article II(1) of this Convention requires State Parties to . . . take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
>
> (a) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

The ratification of these international conventions makes them binding on the provinces as well as in the federal jurisdiction. To date, the principle of equal remuneration for work of equal value is embodied in the federally enacted *Canadian Human Rights Act* (with jurisdiction over approximately 11 per cent of the work force); Quebec's Charter of Human Rights and Freedoms, covering all employees in the province; Manitoba's Bill 53, *The Pay Equity Act*, covering narrowly defined public sector employees; and Ontario's Bill 154, *An Act to Provide for Pay Equity*, covering public sector, broader public sector and private sector employees. Public sector employees are employed directly by the provincial government, whereas employees in the broader public sector are employed by school boards, hospitals, universities and the like.

2. Federal Legislation

Canadian Human Rights Act

Section 11 of the *Canadian Human Rights Act* (CHRA) came into force on March 1, 1978. It applies to all employees of federal departments, agencies, and Crown corporations, and corporations under federal jurisdiction, including employees of banks, airlines and interprovincial transportation. Section 11 states that:

> It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value (*Canadian Human Rights Act* 1977).

The Canadian Human Rights Commission (CHRC) is charged with enforcing the legislation. The Commission can initiate complaints (although it has yet to do so) and may respond to complaints filed by individuals and/or third parties. Also, section 38.1 of the *Canada Labour Code* permits an inspector under the Code, where he or she has reasonable grounds to believe that section 11 of the CHRA has been breached, to refer the matter to the Canadian Human Rights Commission for enforcement (Abella 1984, 243). This provision has never been used. The CHRA provides for fines of up to $50,000 for threatening, intimidating or discriminating against a person for (1) making a complaint, or (2) helping in one of the Commission's investigations.

Once a complaint has been filed, the Commission examines it to determine whether it has merit and/or whether there is an alternative remedy available. The Commission may reject the complaint at this stage. It is therefore important that complainants, and particularly complainant groups, present adequate evidence in support of their claim when filing a complaint. The fact that the legislation is not pro-active, i.e., employers do not have to implement equal pay for work of equal value unless they are directed to do so after an investigation by the Commission, heightens both the importance and the difficulties of complaint preparation.

In November 1986, the CHRC revoked the original Equal Wages Guidelines governing the manner in which section 11 is to be applied "to satisfy the plea that the Commission often hears from employers for more direction as to exactly what is expected of them under Section 11" (CHRC 1985, 3). The new Equal Wages Guidelines (CHRC 1986) cover a variety of highly relevant issues and will be discussed in some detail.

First, the new guidelines clarify the manner in which the assessment of value is to be made. The guidelines state that "skill" shall be assessed by considering the intellectual and physical qualifications acquired by experience, training, education or natural ability, without regard to the methods by which the qualifications are acquired. "Effort" includes intellectual as well as physical effort, and the two may be compared. "Responsibility" includes the extent of responsibility for technical, financial and human resources. Finally, "working conditions" do not include consideration of shift or overtime work if a premium wage is paid for either and shall include noise, temperature, isolation, physical danger, health hazards and stress.

Second, the Commission has redefined "establishment" for the purposes of the Act in "functional rather than in geographic terms" (CHRC 1986, 11) so that the "employees of an establishment" now include all employees of the employer subject to a common personnel and wage policy, whether or not that policy is administered centrally.

Third, the Commission has outlined clearly the percentages required to establish the predominance of one sex or the other in a given occupational group. Gender predominance must be established in both the complainant group and the group selected for purposes of comparison (the 'comparator' group) before the Commission will proceed with an investigation. An occupational group will be deemed to be predominantly of one sex where the number of members of that sex, for the year prior to the complaint, constituted at least (1) 70 per cent of the occupational group, if the group has less than 100 members; (2) 60 per cent

of the group, if the group has 100 to 500 members; and (3) 55 per cent of the group, if the group has more than 500 members.

Finally, the new guidelines outline all the "reasonable factors" an employer may cite to justify a difference in wages where equal value has been established for the jobs performed by male and female employees. These include (1) different performance ratings, (2) seniority, (3) red-circling (the practice of maintaining a job's pay level even when the job has been downgraded), (4) a rehabilitation assignment, (5) a demotion procedure, (6) a procedure of gradually reducing wages for any of the reasons that might relate to a demotion procedure, (7) a temporary training position, (8) the existence of an internal labour shortage in a particular job classification, (9) a reclassification of a position to a lower level where wages are maintained at the higher classification level, and (10) regional rates of wages, where the wage scale that applies to employees provides for different rates of wages for the same job depending on the geographical location of the workplace. The inclusion of this last "reasonable factor" was urged strongly by employers during the consultations on the guidelines held by the Commission. Participants in the consultations included some 70 federal-jurisdiction employers, including both Crown corporations and private sector employers, unions, and women's groups. Employers were concerned that the going rate for a certain type of work in a given region not be skewed by equal value decisions (Labour Canada 1986a, 10).

The new guidelines will serve to clarify some of the more ambiguous concepts in the Act. They will also act to constrain employers who might have attempted to circumvent the Act on the grounds that it was not clear enough about how those concepts are to be applied.

If, in a preliminary investigation, the employer cannot justify an apparent instance of discrimination, and the complainant(s) have both established gender predominance and satisfied the same establishment requirement, the Commission appoints an investigator. The investigator uses the employer's job evaluation plan, where one exists, and as long as it is not sex-biased, to evaluate both the complainant's and the comparator's jobs. (A sex-biased evaluation scheme, discussed later in this paper, is one that is structured or weighted so as to favour factors usually associated with traditionally male jobs.) On completing the investigation, the investigator presents a report to the Commission. The Commission then appoints a conciliator to assist the parties in arriving at a settlement. If the parties fail to arrive at an acceptable (i.e., approved by the Commission) settlement, the Commission appoints a Human Rights Tribunal with full powers to order a settlement, including retroactive pay if appropriate. The parties may settle at any time prior to the start of a tribunal hearing.

To date, the Commission has received 77 complaints of wage discrimination. Of that number, 26 complaints were either dismissed or withdrawn; 23 were settled, benefiting about 5,000 workers; and another 18 complaints were under investigation, were before a Human Rights Tribunal, or were awaiting a tribunal decision (T. Woodhead, Canadian Human Rights Commission, telephone conversation, March 23, 1987).

The new Equal Wages Guidelines were drafted with a view to encouraging voluntary compliance with section 11. The Commission has indicated that it will monitor progress toward compliance closely, and the Commissioner has stated that the Commission "will

consider initiating establishment-wide complaints against employers who continue to drag their feet two years after the new guidelines are in place" (Labour Canada 1986a, 13).

Although the Commission has not initiated a complaint to date, it is likely to make good on its promise to do so. The reason has less to do with the Commission than with the proclamation, on August 13, 1986, of the *Employment Equity Act*.

Employment Equity Act

The *Employment Equity Act* was drafted in part in response to the recommendations of the Macdonald Royal Commission, the Parliamentary Sub-Committee on Equality Rights, and the Abella Royal Commission. The Act states:

> The purpose of this Act is to achieve equality in the work place so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by . . . [designated groups] . . . by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

In short, the purpose of the Act is to promote affirmative action as a means of achieving employment equity. The "designated groups" are women, aboriginal peoples, disabled people, and people who, because of their race or colour, are part of a visible minority in Canada. The Act applies to private sector, federally regulated companies that want to do business with the federal government and employ more than 100 people, and to Crown corporations employing 100 or more people. It does not apply in Yukon or Northwest Territories, nor does it apply to any corporation that is a department as defined in the *Financial Administration Act*. This is because the federal government has had an affirmative action policy and program in place since 1983.

The Act requires that employers develop a formal plan and timetable for implementing employment equity. The plan must be devised after consultation with the employee representative or bargaining agent, so that areas of systemic discrimination can be identified and an appropriate level of representation in various positions be determined. This level of representation must be proportional to the designated groups' representation in the work force or, in certain occupations, to the segment of the work force that the employer might reasonably draw from. Employers then must draw up an annual plan stating their goals and timetable for implementing equity. Finally, on or before June 1, 1988, and annually thereafter, employers must file a report with the Minister of Employment and Immigration containing the following information: their industrial sector and location; the total number of employees and the number of employees in designated groups; the employer's occupational groups and the breakdown of employees in them as indicated above; the salary range of employees generally and by designated group; and the number of employees hired, promoted and terminated and the representation in those categories of persons in designated groups.

The Minister sends a copy of this report to the Canadian Human Rights Commission (CHRC). Copies of the report are available to the public for the price of photocopying and mailing.

The advantage of these reports from the Commission's perspective with respect to initiating complaints, is that there is a strong direct relationship between sex discrimination in hiring, promotion, and occupational segregation and sex discrimination in pay. Further, the statistics furnished in the reports show immediately whether gender predominance exists – one of the major criteria to be met by complainants before a pay investigation can be launched.

Comments

Federal pay equity legislation is less effective than it might be because it is based on reacting to inequities once discovered rather than pro-active, that is, directing that employers eliminate them. The burden is on those who believe their work is undervalued to prepare and file a complaint. Because "most of the major complaints to date have involved female and male categories rather than individual employee comparisons, [the] process has required the complainant group to do substantial preparatory work" (Cornish 1986, 11).

The complaint-based nature of section 11 also means that employers are not obliged to have gender-neutral job evaluation schemes covering all employees. To conduct its investigations, the Commission must therefore put job evaluation schemes in place. This in turn means that investigations are generally lengthy, costly, and complex and often create disruption and ill will in the workplace.

Further, given that the Commission has not initiated any complaints to date, it is rational for employers to delay implementation of equal pay for work of equal value until compelled to do so. Once a complaint is lodged, it may or may not prove successful and may in any case take years to resolve.

Recently, the Commission indicated that it is aware of and prepared to act to correct the weaknesses inherent in the federal approach to pay equity. On June 25, 1987, Gordon Fairweather, then Chief Commissioner, announced that the CHRC would be recommending that Parliament amend section 11 of the *Canadian Human Rights Act* to increase its effectiveness. The Commission has proposed the following:

> Section 11 should be reworded to reflect the fact that equal value legislation is intended to redress gender discrimination of employees in female job classes. Federally regulated employers with 100 or more employees would be required to develop a pay equity plan to achieve compliance or to demonstrate that they were already in compliance with section 11 and to file with the Commission a certificate of compliance. This plan would have to be developed within two years of the coming into force of the legislation. Employers failing to comply with these requirements would be subject to a fine of $50,000 (CHRC 1987, 11).

The Commission recommends retaining the complaints system as well, even though, in announcing the recommendation for a new approach, they concluded "that the individualized nature of the complaints process is poorly suited to the achievement of justice for a very large number of female workers" (CHRC 1987, 11). The complaints mechanism is seen as an appropriate means of dealing with employers who are found repeatedly to be in violation of the legislation and might also prove useful where pay equity plans are suspect in their design or implementation.

To date, the government has not responded to the CHRC's proposals.

3. Quebec Legislation

Quebec was the first jurisdiction in North America to legislate equal pay for work of equal value. The legislation applies to both the public and private sectors. Quebec passed its Charter of Human Rights and Freedoms in 1975. Section 19 of the Charter states:

> Every employer must, without discrimination, grant equal salary or wages to the members of his [sic] personnel who perform equivalent work at the same place.
>
> A difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

In section 19, the words "salary" and "wages" include compensation or benefits of pecuniary value connected with the employment (Quebec Charter 1975, s. 56). "Equivalent" work means the "same" work and work that is "substantially the same," as well as work of "equal value." "Work at the same place" means all establishments of a single employer.

The legislation is enforced by a Human Rights Commission, also created in 1975. Section 19 is enforced through a complaint procedure. Complaints may be filed by individuals, groups, third parties or the Commission itself. The only complaints completed to date involved a worker or workers backed by a union. The Commission has initiated only one complaint. There has been a sharp drop in the number of complaints filed since 1983, a phenomenon the Commission believes is explained partially by the recent economic recession (Labour Canada 1986a, 20). Since 1975, the Commission has dealt with fewer than 40 complaints (McDougall 1985, 35).

In the area of job evaluation, the Commission has relied on existing systems whenever possible and has been reluctant to impose an externally designed system. Only four equal value cases have reached the litigation stage. Of the 26 cases considered of merit and completed by December 1984, 22 were settled at the mediation stage (McDougall 1985, 35).

In December 1984, the Quebec Charter was amended to allow the Commission to impose affirmative action programs as a remedy when an investigation reveals a number of discriminatory practices. The rationale for this change is that pay inequity rarely exists as an isolated discriminatory action. Thus, under the new legislation, a pay equity investigation by

the Commission will be part of an analysis of systemic discrimination. That is, the Commission will look for additional sources of discrimination, such as segregation of employment categories; the exclusion of female categories from existing evaluation systems; the undervaluation of certain female positions; the existence of fewer promotional possibilities for women or none at all; seniority rules that place women at a disadvantage; discriminatory practices in transfers, promotions and layoffs; factors that limit access to overtime work, and so on (Ledoyen in Labour Canada 1986a, 21).

Once the Commission has determined that a section or sections of the Charter have been violated, it recommends an appropriate remedy to the parties. If the recommendations are not followed within a specified period, the Commission will prosecute the case in the courts.

Comments

The flaw in the Quebec legislation is the same as that in the federal jurisdiction; that is, the legislation is reactive rather than pro-active; it does not prescribe standards and procedures for employers but only reacts to discriminatory behaviour after the fact. Although both the federal and the Quebec Commission have the power to initiate investigations regarding pay equity, neither has the resources to exercise this power effectively. Thus, both jurisdictions must rely heavily on (1) well prepared and well supported complainants, and (2) voluntary compliance by employers with the legislative provisions on equal pay for work of equal value.

The recent introduction in both jurisdictions of legislation requiring the implementation of affirmative action programs can be interpreted as (1) an attempt to remedy the evident failure of employers to improve the pay and opportunities of female workers voluntarily in accordance with existing legislation; and (2) a recognition that equal value laws alone will not close the earnings gap entirely; rather, a combined approach to reducing occupational segregation and systemic discrimination is required. After all, "separate but equal" does not mean real equality in the workplace has been achieved.

4. Manitoba Legislation

Unlike the federal and Quebec complaint-based approaches to equal value, Manitoba and Ontario have adopted pro-active approaches to eliminate the earnings gap.

In 1985, Manitoba passed *The Pay Equity Act*. The Act applies only to public sector employees, and its implementation was to be phased in, starting with the civil service in October 1985. All Crown entities, along with external agencies named in the schedule to the Act (four universities and 24 of the largest health care facilities) were to begin implementation not later than October 1, 1986.

In documents published when the Act was passed, "pay equity" is defined as a compensation practice that is based primarily on the relative value of the work performed, regardless of the sex of the person performing it. It requires that no employer establish or

maintain a difference between the wages paid to male and female employees performing work of equal or comparable value. "Value" is to be assessed using a composite measure of the skill, effort and responsibility normally required in the performance of the work and the conditions under which the work is performed. As is the case federally and in Quebec, a job evaluation method based on factors and points is intended. Less reliable and more value-laden methods of evaluation, such as job ranking or job pairing, are not permitted. (The importance of this distinction will be discussed in detail later in this paper.)

Three features of Manitoba's legislation distinguish it from the federal and Quebec laws: first, its pro-active approach; second, its use of the collective bargaining process; and finally, the establishment of a Pay Equity Bureau with a broad but exclusive mandate for pay equity.

The pro-active approach requires employers to evaluate all jobs in an establishment under a single, comprehensive, gender-neutral job evaluation scheme, and to apply the scheme to classes of work where one sex predominates. The Pay Equity Bureau has issued several documents offering guidance on how to develop such a scheme, most notably, a booklet that draws heavily on a similar document prepared by the Equal Opportunities Commission in Great Britain. *Pay Equity and Job Evaluation* (Manitoba Labour 1986) outlines different types of job evaluation schemes and highlights how sex bias can unintentionally creep into their design. This information is valuable to any employer setting up a job evaluation scheme, but it is of particular value to the employer who is subject to legislation such as Manitoba's.

The purpose of the job evaluation exercise is to identify pay inequities. Employers must bargain with employee representatives or bargaining agents as to the selection and application of the job evaluation scheme. An agreement on the job evaluation scheme was to be reached no later than June 30, 1986 for the Manitoba civil service and no later than June 30, 1987 for Crown entities and external agencies. The scheme chosen for the civil service was a factor-points system devised by the U.S.-based international firm, Hay Management Consultants Ltd. (see Appendix A); the system was also used by the state of Minnesota to implement pay equity in the public sector (Watson 1986b, 7).

Once the selection and application of a job evaluation scheme has been agreed upon, the parties enter a second round of negotiations to determine the exact allocation and phasing in of necessary wage adjustments. The agreement regarding implementation must be reached no later than September 30, 1987 for the civil service and not later than September 30, 1988 for Crown entities and external agencies. Should the parties fail to reach agreement on either phase 1 (selection and application of a job evaluation scheme) or phase 2 (allocation and phasing in), the issues will be resolved by adjudication: in the civil service by the appointment of a tripartite arbitration board and in Crown entities and external agencies by the Manitoba Labour Board.

Pay equity adjustment may be phased in over a four-year period commencing as soon as agreement has been reached about which groups will receive pay equity increases, how much they will receive, and when they will receive the increases. The legislation states that the increases need not exceed 1 per cent of total payroll in each year over the four-year period.

A Pay Equity Bureau has been established in the Manitoba department of Labour to monitor compliance with the legislation. The Bureau's activities include providing pay equity information and assistance to employers, employees and bargaining agents in both the public and private sectors and liaising with the Pay Equity Officer in each Crown entity and external agency. Because Manitoba is the first jurisdiction in Canada to implement a pro-active approach to pay equity, its success or failure in achieving its cost and pay equity goals (under $400 million over the four-year phase-in period and a 15 to 20 per cent rise in pay for affected women workers) should be examined closely by advocates and foes of equal value alike. In this way, positive lessons can be learned and costly mistakes avoided in other jurisdictions considering similar legislation.

Comments

Manitoba's decision to delay introducing pay equity in the private sector has both positive and negative implications. On one hand, the government and other interested parties will benefit from public sector experience, in terms of both drafting workable legislation for the private sector and testing implementation features such as cost ceilings, timetables, designated workers to be affected, and the definition of gender predominance (currently defined as 70 per cent or more of those in a class of 10 or more people). On the other hand, delaying the introduction of private sector legislation means that most Manitoba women, who earn on average only 57.6 per cent of what their male counterparts do, will have to wait for pay equity (calculated from Statistics Canada 1987, 27). Given that the earnings situation of the 7,300 women employed in the Manitoba civil service is already much better (their average wage is 83 per cent of that of the average male employee), the delay seems particularly unfair (Watson 1986b, 7).

On a different note, it should be of some concern that there is no provision in the legislation for bringing a complaint after pay equity has supposedly been implemented. Once the four-year period is up, presumably, so too is the opportunity to pursue equal pay for work of equal value for those who believe, after the initial four years, that it has not been achieved (Cole, Hamilton and Hull 1986, 23).

The adoption of the Hay system of job evaluation, though agreed to in negotiations between labour and management, may prove problematic. The Hay system or the Hay-Aitken system as it is also known, is the most widely used system of job evaluation in Canada. It is estimated that approximately 40 per cent of employers in the market for such schemes use the Hay system (Schiele 1986, 20). The system has some fairly serious drawbacks, however, particularly with respect to factor selection. With the exception of the sub-factors denoting working conditions, the sub-factors reveal a fairly consistent bias toward managerial and executive jobs (see Appendix A). Also, there appears to be overlap among some of the sub-factors, a problem that can lead to excessive points being awarded for a given job. For example, under the core factor "Know-How" is listed the sub-factor "Conceptual or actual management knowledge and skill"; while under the core factor "Accountability" this sub-factor appears: "The role of the job in bringing out the objectives of an organizational unit or function, including accountability for the work of others." The second sub-factor appears to be little more than a descriptive version of the first. It would be difficult to imagine a job

requiring conceptual or actual management skill that does not also entail a role in bringing about the objectives of an organizational unit or function.

Finally, Manitoba's *Pay Equity Act* provides no means for employees or others to challenge either a job evaluation scheme or the allocation and phasing in of the increases that are negotiated and implemented.

Manitoba Premier Howard Pawley has promised to introduce legislation governing pay equity in the private sector within the next four years (Watson 1987, 13).

5. Ontario Legislation

Ontario's pay equity law, *An Act to Provide for Pay Equity*, was proclaimed on June 29, 1987. The Ontario legislation is distinguished from the other pay equity legislation surveyed so far in that it combines a pro-active approach to implementation with complaints-based follow-up on compliance. Implementation and monitoring of compliance with the Act will be the responsibility of a Pay Equity Commission established by the Act.

As with Manitoba's public sector legislation, Ontario employers (both public and private sector) will be compelled to evaluate all jobs in their organizations objectively, including regular part-time jobs. (In Ontario's legislation, the term "public sector" includes broader public sector employers, such as hospitals, school boards, universities, and Crown corporations.) They must then compare those jobs that are predominantly female with those that are predominantly male, adjusting salaries and benefits for women workers where equal value has been established but is not reflected in present compensation levels. It is important to note that the government of Ontario does not intend that "equal value" be defined as "identical value" for purposes of implementation. As Jane Marlatt of the Ontario Women's Directorate has indicated, "It is important that the meaning we give to equal value reflect the *intent* of the principle of pay equity. Thus the term 'equal value' should not be taken to mean that an exact match between female and male jobs would be required." (Marlatt in Labour Canada 1986a, 26).

Like Manitoba, Ontario requires that, where there are unions, employers negotiate with bargaining agents or employee representatives concerning the selection or development of a job evaluation plan. This must be accomplished within a specified period so that employees have an opportunity to challenge the scheme or to offer their input. Any disagreements that cannot be resolved by a parties will be settled by the Pay Equity Commission.

Because Ontario's legislation requires only that employers compare predominantly female jobs with predominantly male ones, a good number of women workers may be excluded from the legislation. (In the Act, predominance in a female job class may be negotiated to be less but need not be more than 60 per cent, and male predominance may be negotiated as being less, but need not be more than 70 per cent). For instance, in an establishment such as a day care centre, where all the employees are female, there is no male class of jobs with which to compare the women's jobs. Elaine Todres of the Ontario Women's Directorate has indicated that this constitutes a "different problem that will be one of the first issues to be addressed by

the Pay Equity Commission" (quoted in M. Crawford 1987, 92), although she gives no indication as to how this issue will be addressed.

Pay equity in Ontario's public, broader public and private sectors will be phased in. Implementation will proceed according to formulae taking into account the location of the employer and the number of people employed. Private and public sector employers that had at least 500 employees on June 29, 1987 (the date the Act came into effect) will have two years from that date to post a pay equity plan. Public sector employers must begin making salary adjustments in accordance with that plan within two years of the Act becoming effective; private sector employers with at least 500 employees have three years to begin adjusting salaries. Private sector employers with more than 100 but fewer than 500 employees must post plans within three years of the effective date and begin salary adjustments within four years; those with more than 50 but fewer than 100 employees have four years to post and five years to make the first adjustments; and those with at least 10 but fewer than 50 employees have five years to post and six years to begin adjusting salaries.

The legislation requires that employers set aside 1 per cent of the previous year's total payroll to correct inequities in women's wages, unless the amount required to achieve pay equity is less than 1 per cent of payroll. Employers must continue to set aside funds according to this formula until equity is achieved. For the public sector, there is a seven-year time frame in the legislation (similar to Manitoba's four-year limit) for achieving pay equity. Technically, private sector employers may take as long as they like to implement pay equity, provided that the annual amount devoted to the exercise is at least 1 per cent of the previous year's payroll. Ultimately, the salaries of the lowest paid women workers must be brought up to the level of the lowest paid male workers, and once equity is achieved, the employer must maintain it.

There is one exception in the Ontario law that differs from other Canadian legislation. Generally, the exceptions set out in the Ontario law are similar to those allowed in the federal, Quebec and Manitoba jurisdictions, i.e., seniority, red-circling, temporary training, and so on. However, the Ontario legislation adds to these a notable exception not found in pay equity legislation elsewhere in Canada: "bargaining power." The Act states that

> After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength (*An Act to Provide for Pay Equity*, s.8(2)).

This provision will mean that even though two jobs have been rated as being of equal value, if one is held by a non-union individual or a member of a weak union, while the other is held by a member of a strong union that has negotiated a pay increase, the first worker will not be entitled to the same increase. This exception may prove the undoing of pay equity in the years following its initial implementation. The large majority of women workers in Ontario are not unionized; even when they are, their unions seldom wield the bargaining power of unions where the membership is predominantly male (Ontario Federation of Labour 1986, 20). A strike by assembly-line workers (mostly male) can halt production and cost a firm millions of dollars a day in lost revenues; similar action by administrative support workers in the same firm (mostly female) is unlikely to be as disruptive or costly. This means

simply that production workers have greater inherent bargaining power, not that their jobs have greater inherent value.

Membership in a trade union has never guaranteed pay equity for women. In 1984, female trade unionists in Canada earned on average 83.7 per cent of the hourly wage of their male counterparts (Labour Canada 1986b, 100). It is naive and short-sighted to maintain that bargaining power constitutes an acceptable exclusion. It is the equivalent of arguing that once employers have achieved their targets under an affirmative action program, they are free to return to a policy of hiring white, able-bodied males.

Comments

Notwithstanding any flaws in the legislation, the Ontario government is to be congratulated for its consultative approach to implementing pay equity, which has significant economic and social implications for labour, business, women's groups and the general public. Extensive public consultations were conducted following publication of a Green Paper outlining the purposes of the exercise and presenting three models of potential legislation. In all, 236 written submissions were received, and there were 149 oral presentations from groups and individuals (Clark, Cook and Dimma 1986, 2). Once the bills (originally, separate bills respecting the public and private sectors were presented) had received second reading, the interested parties were again invited to make their views known at committee hearings; then the Committee presented its final draft of the legislation to the Legislature. The effort to involve those who will be affected by the legislation will no doubt pay off in terms of the level of commitment of the parties to making the law work effectively.

The integration of the employer-initiated and complaint-based approaches should prove advantageous in implementing the legislation. The dual approach makes the law flexible enough to be adaptable to the needs of the public and private sectors, large and small workplaces, and unionized and non-unionized workers (Marlatt in Labour Canada 1986a, 27). In short, while the legislation incorporates provisions (such as the bargaining power exception discussed above) that may act to undermine its purpose, it also incorporates provisions that will allow challenges to many potential abuses.

The phasing-in provisions of the legislation are sufficiently generous that the cost to businesses should be relatively reasonable. A maximum of five years has been allowed for employers with fewer than 50 employees before they even have to post a *decision* as to whether they will develop a pay equity plan; thus the impact on small businesses should not be unduly severe. From the point of view of many women, the prospect of putting up with unequal pay for at least another six years is unjustifiable and unacceptable.

In addition to the issues mentioned in describing Ontario's legislation, there is some cause for concern about the wording of the legislation with respect to job evaluation. Section 12 states that employers shall, before the mandatory posting date, "using a gender-neutral comparison system, compare the female job classes in each establishment . . . with the male job classes in the same establishment to determine whether pay equity exists for each female job class." The use of the term "comparison system" implies that methods of evaluation other

than a factor-points system may be used to determine the value of jobs in an organization. Methods such as whole job ranking and whole job comparison have been widely criticized as unreliable and excessively value-laden (Watson 1984, 8). These methods do not require an analysis of the job but rather rely on the judgement of an evaluator about the relative value of the job to the organization. It is unlikely that such methods will be used, however, because the method of evaluation is subject to negotiation with employee representatives, and because the legislation strongly implies that a factor-points method of job evaluation should be used. Part 1, section 5 of the Act indicates that "the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed."

Finally, the legislation does not give the Pay Equity Commission the power to initiate complaints. This omission represents a serious flaw in Ontario's legislation. As indicated in the discussion of section 11 of the *Canadian Human Rights Act*, filing a complaint demands a good deal of time and effort and requires substantial resources to ensure that the complaint will be considered to have enough merit to be investigated by the Commission. Because only 27.3 per cent of working women in Ontario are unionized (Labour Canada 1986b, 97), and the majority of those are in the public sector where pay inequity is less pervasive, the likelihood that complaints will be filed and investigated is minimal. This would indeed be unfortunate and not a little unjust, given that the earnings gap in Ontario is about 38 per cent for all women, as compared to 23 per cent for women in the Ontario public service (Organized Working Women 1986, 5). These statistics also lend support to the call from many women's groups in Ontario to extend the legislation to include employers with fewer than 10 employees, a category currently excluded from the law.

The Role of Trade Unions and Collective Bargaining in Pursuing Equal Value

There is no doubt that membership in a trade union is a very significant factor in reducing the pay gap between men and women. The gap in average earnings is reduced by over 10 per cent by membership in a union. In 1984, the average hourly wage of unionized women was 83.7 per cent of men's while non-unionized women earned only 69.1 per cent of men's average hourly wage (Labour Canada 1986b, 100). This does not mean, however, that trade unions are exempt from blame when the reasons for the persistence of the wage gap are examined. An unpublished study of the role of British trade unions in pursuing equal value for their female membership revealed that even female-dominated unions were reluctant to press for equal value; it would appear that the male membership in female-dominated unions exercises influence beyond its numerical strength, reflecting the general situation of male domination within the union movement as a whole (Ogden 1986, 43).

In recent years, however, and largely because union growth has depended almost entirely on the increase in female labour market participation in recent years, trade unions have begun to address "women's issues" generally, and pay equity in particular, more seriously than they have in the past. There is evidence from the United States that some companies are implementing pay equity, even where no legislative compulsion exists,

because strong trade unions have begun using their bargaining power to pursue pay equity on behalf of their female members (Bernstein 1986, 56).

In Canada, unions have been instrumental in filing complaints with the Canadian and Quebec Human Rights Commissions. The Public Service Alliance of Canada (PSAC) alone has filed more than a dozen of the complaints received by the CHRC. Considering that the PSAC represents over 180,000 workers, however, this record is not exemplary. The poor overall record of unions in filing complaints is attributable partly to the fact that many unions have adopted a strategy of pursuing pay equity primarily through collective bargaining, while using the threat of complaints as a lever in pay negotiations (Cornish 1986, 17). This strategy may be economically rational for trade unions, in that resources need not be expended in long legal battles with employers, but it is not necessarily a strategy that benefits their female members as significantly as a strategy of mass complaints might do.

"In provinces without equal value legislation, unions have used collective bargaining to try to increase the wages paid for women's work. However most employers in those provinces resist attempts to deal with the issue at the bargaining table when not compelled by law." (Cornish 1986, 17) Although unions have rarely used their ultimate bargaining weapon and actually called a strike over the issue of pay equity, when it has been used, it has been a very effective strategy.

In 1981, the Canadian Union of Public Employees (CUPE) took more than 11,000 workers in British Columbia's Lower Mainland out on strike for up to 15 weeks to back their demand for equal pay for work of equal value for civic, library and school board workers (Cornish 1986, 24). The union wanted base entry rates between clerical and manual workers equalized. The demand was prompted by the fact that 75 per cent of City of Vancouver clerical employees (predominantly female) and 44 per cent of those with 10 years' seniority earned less than the base wage rates paid to manual workers (predominantly male) (Cornish 1986, 23). The strike was bitter. Both sides launched media campaigns encouraging voters to write to politicians supporting the claims of one side or the other. Even after the strike was settled (in stages and effectively in favour of CUPE), the Greater Vancouver Regional District refused to acknowledge the equal value principle.

Although there have been a few instances of unions mounting serious challenges to employers regarding pay equity, they have been confined largely to the public sector, and there have not been nearly enough campaigns to allow unions to escape the charge that they have been deficient and negligent in their representation of their female membership. In short, they could do better. Although the Canadian Labour Congress (CLC) consolidated a number of previous resolutions on employment equity, including pay equity, into a comprehensive resolution on the issue of effective equal value legislation in 1986, the Canadian Federation of Labour has not produced any such document encouraging or directing its affiliates to pursue the issue (Cornish 1986, 29; telephone conversation, March 27, 1987).

The CLC resolution calls for

1. universal application to both the public and private sectors;
2. use of the collective bargaining process to achieve pay equity;

3. special funding designated for pay equity adjustments apart from normal economic wage increases;
4. the achievement of pay equity for women to be realized by increasing the wages of lower paid workers, not by reducing the wages of higher paid workers;
5. where job evaluation systems are used to establish equal pay for work of equal value, one gender-neutral plan shall apply to all employees;
6. an accessible complaint process, including advice, counselling and legal assistance to potential complainants as an inherent part of such legislation;
7. mandatory reporting by employers of their efforts to implement equal pay for work of equal value; and
8. penalties for non-compliance (Cornish 1986, 29).

Job Evaluation

All legislation surveyed here requires, either implicitly or explicitly, that gender-neutral job evaluation schemes be adopted or developed and used to determine and compare the value of female-dominated and male-dominated jobs.

In many ways, job evaluation constitutes the foundation of pay equity. Job evaluation plans are supposed to indicate the value of each job in an organization to that organization, without reference to the sex of the job-holder. As such, they are often the determining factor in assessing the validity of pay equity complaints. In short, job evaluation plays a critical role in the implementation of equal pay for work of equal value.

Job evaluation is a method of relating different rates of pay to different job requirements. It deals with the demands of the job, not the qualities of the individual performing it. It is not about performance; it is not an appraisal system. Finally, as Gill and Ungerson state, "The job evaluation process establishes what is in effect a hierarchy of jobs within an organization and, despite protestation to the contrary, will usually reflect the organization's perceived value of the job to that organization." (1984, 29).

With respect to the pay equity legislation in every jurisdiction surveyed, it is of critical importance that employers ensure that their job evaluation scheme (JES) is designed and applied with the least possible amount of bias, particularly sex bias. As indicated earlier, the mere existence of a JES does not guarantee the employer immunity from a complaint. The JES itself may be shown to be discriminatory, thereby opening to challenge the rates of pay associated with it. Conversely, if the employer can demonstrate successfully that the JES meets criteria set out in legislation and can show that it has been applied fairly, the complaint will in all likelihood be dismissed.

The criteria every JES must meet appear relatively straightforward at first glance. With the exception of the job comparison method of job evaluation alluded to in Ontario's law, all the pay equity legislation discussed here, including the Ontario law, implies that

analytical, factor-points methods of job evaluation are to be used. The method of value determination is invariably stated more or less as follows:

> For the purposes of the Act, the criterion to be applied in determining the value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed (Ontario, *An Act to Provide for Pay Equity*, s. 5(1)).

Listing skill, effort, responsibility, working conditions and other job demands precludes the possibility of using non-analytical methods of job evaluation, which rate jobs as a whole.

Analytical job evaluation systems must also be gender-neutral. This means that the factors and sub-factors chosen, as well as the points and weights associated with them, must be free of sex bias. It is probably fair to assume that most employers who have job evaluation schemes in place did not design or select them with an eye to conforming to equal value legislation. They selected schemes that they no doubt believe to be fair and that have, until recently, fulfilled their purposes by determining pay structures more objectively than would otherwise be the case. However, because subjective judgements are made at every stage in the job evaluation process – from choosing the factors and weighting them to placing jobs in evaluated categories once the scheme is finished – and because sex bias was not considered a problem in job evaluation until quite recently, it is likely that many existing schemes will prove inadequate for the purpose of implementing pay equity. Moreover, this presupposes an integrated scheme that applies to all workers in a given organization, which is not generally the case. Often, clerical workers are covered by one scheme and manual or production workers by another, or one group of employees has a scheme but another does not. When employers claim that "you cannot compare apples and oranges" by way of opposing the principle of pay equity, it is largely because they have not done so traditionally by any means, let alone through an integrated, analytical, gender-neutral job evaluation scheme.

Much of the resistance to equal value legislation in Ontario has focused on the issue of job evaluation. Why? In part, because job evaluation is costly. Even without hiring consultants to perform job evaluations, there are high costs associated with allocating time and personnel to a job evaluation exercise.

Job evaluation is also very complex. Rating jobs according to the various demand headings requires a knowledge of what the jobs entail. This means undertaking job analyses to produce detailed descriptions of job characteristics. Most job evaluation experts recommend that employees participate actively in the exercise to ensure satisfaction with and co-operation in the operation of the resulting system. This implies that employers should provide complaint mechanisms and allot time for complaints to be investigated, before the final job evaluation system is implemented. One of the major sources of conflict in the process is the selection of 'key' or 'benchmark' jobs. These are the jobs in the organization against which all other jobs are measured.

Typically, once a firm or an organization has identified the factors on which jobs are to be evaluated, they select a number of key jobs and evaluate them according to the factors identified. The ranking of the key jobs according to the evaluation is then compared to the rates of pay for those jobs. If there appears to be little or no relationship between ranking and

pay, adjustments are often made to the factors, the weights attached to them, or the selection of key jobs, so as to achieve an acceptable level of predictability in the scheme. It is at this stage that bias is most likely to creep in. In an effort to have the scheme "make sense," the architects of a job evaluation system may well end up perpetuating anomalies and discrimination in the existing wage system. This may also hold true if the designers of the system use the external market as a wage guide: the external job market may or may not operate freely, but it is not free of discrimination (Schwab 1985, 63).

In adjusting factors and sub-factors and in deciding the point spread or weights attached to them, bias can and does occur. Some examples of biased factor selection and factor weighting may prove useful.

Example of Discriminatory Job Factors

Factors (Each factor is assigned a score on a scale from 1 to 10)	Maintenance Fitter	Company Nurse
SKILL		
Experience in job	10	1
Training	5	7
RESPONSIBILITY		
For Money	0	0
For Equipment and Machinery	8	3
For Safety	3	6
For Work done by Others	3	0
EFFORT		
Lifting Requirement	4	2
Strength Required	7	2
Sustained Physical Effort	5	1
CONDITIONS		
Physical Environment	6	0
Working Position	6	0
Hazards	7	0
TOTAL	64	22

Source: UK Equal Opportunities Commission 1985.

Bias is evident in the factors because a great many more of them relate to the male job than to the female job. Further, there is duplication between factors, especially those that are relevant to the male job. For example, a high score on the "lifting requirement" factor will usually be associated with a high score on the "strength required" factor, and consequently will add unfairly to the total score for the male job.

The same example also illustrates how biased weighting may enter a scheme. For example, instead of assigning points from 1 to 10 for each factor, the number of available points might vary for each factor. Under SKILL the factors might look like this:

Example of Discriminatory Weights

	Maintenance Fitter	Company Nurse
SKILL		
Experience in job		
(a) 0 to 5 years - 5 pts.		5
(b) 5 to 10 years - 10 pts.	10	
(c) more than 10 years - 15 pts.		
Training		
(a) 2 years secondary - 5 pts.	5	
(b) completed secondary - 10 pts.		
(c) Post-secondary - 20 pts.		20
TOTAL	15	25

In this example, the nurse benefits from the weighting bias, but the bias remains, regardless of who benefits from it. Because the fitter does not have access to the top end of the point scale under training, and because that factor now has more potential weight in the final score than experience does (i.e., 20 points is the maximum for training, versus a maximum of 15 points for experience), he is at a disadvantage from the beginning. The situation might be reversed if, for example, a job could be assigned a maximum of 100 points under responsibility for equipment and machinery, depending perhaps on its monetary value.

The Equal Opportunities Commission in Britain has published tables showing factors that favour male jobs and female jobs; these have been reprinted in Manitoba Labour's *Guide to Pay Equity and Job Evaluation* (1986) and are reproduced here (Appendix B). They may help to clarify the often difficult distinction between a biased and a non-biased factor.

The contention that job evaluation schemes are impractical because they ignore the external labour market and create artificial supply and demand conditions, leading ultimately to serious labour market allocation problems, will be dealt with later in this paper in discussing employer concerns.

Issues and Concerns of Women's Groups and Employee Representatives

The vast majority of women's groups and trade unions support the principle of pay equity, but they have a number of concerns about its implementation by means of legislation. Some of these concerns are general, applying to all jurisdictions, while others are directed at specific elements of individual acts.

(1) Coverage

The issue of who is covered under pay equity legislation is a topic of major concern to women's groups. Coverage is affected by a variety of legislative provisions, including the definitions of establishment and gender predominance, but the most obvious effects are determined by the broad definitions of application.

Although all workers in the federal and Quebec jurisdictions are covered, the effectiveness of the legislation is limited by the complaint-based nature of the relevant acts. Private sector and non-unionized workers are at a particular disadvantage in seeking redress for pay inequity, because the resources and support required to file a complaint are substantial.

In Manitoba, only workers in the narrowly defined public sector can benefit from the provincial *Pay Equity Act*. In the public sector, school boards and municipalities are excluded from coverage. Private sector workers are not covered at all, although Premier Pawley has promised to introduce pay equity legislation governing the private sector during his government's term.

In Ontario, workers in the public, broader public and private sectors are covered by pay equity legislation. However, private sector employers with fewer than 10 workers are exempted. The Ontario Federation of Labour was one of many groups appearing before the Ontario consultation panel on pay equity to assert that "universal application of the law is critical. It must cover all workers." (OFL 1986, 7). It has already been noted that approximately 17 per cent of the province's workers will not be covered by the Act by virtue of this exclusion alone.

Further limitations on coverage will occur when certain definitions enshrined in the various acts are applied. In Manitoba, groups of workers may not be compared for purposes of pay equity unless gender predominance of 70 per cent is established, or unless a lower percentage is negotiated between the employer and the employee representatives. In Ontario, similar provisions require that 60 per cent predominance be established for female workers and 70 per cent for their male comparators, unless otherwise negotiated. The gender predominance requirements in both provinces will act to exclude women who may well, as a number of federal cases have shown, have legitimate complaints of pay inequity. For example, in the successful complaint by federal government librarians, comparing their jobs to those of historical researchers, a group that is 80-per cent male, the librarian's group was 66-per cent female. In another complaint, which the Canadian Human Rights Commission has referred to tribunal, a hospital services group that is 58-per cent female is being compared to the 70-per cent male general services group (CHRC 1984, 5, 13). The CHRC has since released new guidelines which indicate that predominance may be established at as low as 55 per cent where the group has more than 500 members (CHRC 1986, 4796).

The definition of establishment can also lead to exclusions, whether or not an employer acts deliberately to evade the law. For example, unlike the federal law, which defines the employees of an establishment as "all employees subject to a common wage and personnel policy, whether or not such a policy is administered centrally" (CHRC 1986, 4795), the Ontario legislation defines an establishment as "all of the employees of an employer employed

in a geographic division or in such geographic divisions as are negotiated by the parties . . ." (An *Act to Provide for Pay Equity*, s.1). This means that an employer could assign workers in such a way that all female employees were located in a plant in northern Ontario while all male employees were located in southern Ontario, thus avoiding the application of the law. Depending on how the company organizes its production, this might be quite feasible. For example, a candy manufacturer could make the product in one location but pack and distribute it from another.

Finally, because indirect comparisons are not permitted in Ontario (as they are in Manitoba and federally), many women who work in fields that are predominantly female, such as day care, the garment industry and nursing homes, will not be covered by the legislation. This is a serious omission from the Ontario law and should be corrected. There are at least two ways to allow for indirect comparisons. First, there is the possibility of instituting a 'notional man' test, that is, determining what a man would be paid if he were to do the job instead of a woman. Second, and far more acceptable to employers, is the possibility of allowing comparisons to groups of men who are performing work of equal value but who are not necessarily performing it in the same establishment.

(2) Time Limits

Two aspects of this issue are of concern to women's groups and unions: the establishment of a time limit by which equity is deemed to have been achieved, and the absence of any time limit by which equity must be achieved. Manitoba has legislated the establishment of a time limit, but there is no requirement that employers demonstrate that equity has in fact been achieved, while Ontario has set no time limit at all for private sector employers. (Pay equity in Ontario's public sector must be achieved within seven years, but no such provision applies to the private sector.)

In Manitoba, a period of four years had been specified, during which pay equity adjustments of at least 1 per cent of the previous year's payroll are to be made to women workers. At the end of the four years, however, employers are not required to make any further adjustments as regards pay equity, whether or not equity has been achieved. There is an implicit assumption that equity will have been achieved within four years, as assumption based largely on Minnesota's experience in this area. There should be either a mechanism for extending the time limit until equity is achieved, or a provision stating that if equity has not been achieved in four years, additional payments must be made to redress the inequity in full.

In Ontario's legislation, there is no time limit on the achievement of pay equity in the private sector. As long as employers commit at least 1 per cent of the previous year's payroll to pay equity adjustments, they can take as long as they want to implement equity. An example shows how this omission in the legislation might affect women workers. Take an employer with 50 workers, 40 women and 10 men. The women earn about $15,000 a year and the men $20,000. Suppose the employer determines that the women's jobs are undervalued by $2,000 a year. The employer's total payroll is $800,000, 1 per cent of which is $8,000. Divide $8,000 by 40 women, and the women will gain $200 each over the course of the year in equity adjustments (or $16.60 a month). All other things remaining equal (i.e., so that in relative

terms the percentage of payroll does not change much over the years), it would take about 10 years for the women to achieve pay equity. (Even if the employer calculated a $300 raise annually for both the women and the men and added the equity adjustment on top, the women's adjustment only rises to $205 in the second year, $211 in the third year, and so on).

The potential for lengthy delays in pay increases that have been determined as rightfully belonging to women workers is far too great for most women's groups, unions, and women workers to accept. No one wants to bankrupt employers, but neither do they believe that they should continue to pay for past discrimination almost indefinitely. Ontario should impose a time limit for achieving pay equity in the private sector. The Ontario Federation of Labour has suggested five years (1986, 12), and the Equal Pay Coalition has stated that "the payment of pro-active money should be accomplished within a four year period," with an additional payment at the end of this period to redress any remaining inequity (1985, 39).

(3) Nature of Legislation

Legislation that directs employers to take positive measures to ensure that equal value is achieved within a reasonable time, together with a complaint-based approach to ensure that all workers have a right to pursue equity where it has not been achieved or not been implemented satisfactorily: this is the approach to equal pay for work of equal value favoured by most women's groups and unions. To date, only Ontario has legislation that could be so described. Manitoba has no complaint mechanism, though it has taken an active approach; and the federal and Quebec legislation is complaint-based, relying on voluntary compliance by employers to ensure pay equity where no complaint has been filed.

(4) Allowable Exceptions

Women's groups and trade unions generally maintain that seniority should be the only basis on which an employer can maintain unequal wages where equal value has been demonstrated.

There is concern that other allowable exceptions, such as red-circling, merit pay, temporary training, labour shortages, regional rates and casual employment will be used by employers to undermine the spirit and intent of the law. The law in Manitoba regarding exceptions is unclear. None is stated explicitly, but the definition of pay equity states that it means "a compensation practice which is based *primarily* on the relative value of the work performed . . ." (*Pay Equity Act*, s.1; emphasis added). This distinction can be interpreted to mean that because the wages are not based exclusively on the value of the work, exceptions similar to those in other jurisdictions may be permitted.

How might employers use exceptions to the detriment of women workers? The concern over red-circling arises because employers may red-circle men's jobs, thus preventing men's

wages from increasing, in order to use the savings to make equity adjustment payments to women.

Merit pay might be used to maintain pay differentials should male workers object when women begin receiving the same pay as men for jobs the men had not previously considered equal to their own.

Objections to regional rates are based on the fact that the lowest paid women often live and work in areas that are already economically depressed and so may have a greater need for the wage increases that would have been implemented save for the exception. Only the federal law names regional rates as an exception.

Allowing an employer to claim that a labour shortage is the reason pay inequity has been maintained is an issue of serious concern to women's groups and trade unions. It is complicated because it involves a number of the fundamental reasons equal value legislation was introduced in the first place. Neither Manitoba nor Quebec permits pay inequity to persist on these grounds. The essence of the problem is this: if employers are permitted to recruit and retain women for less or, conversely, are unable to recruit and retain men without paying them more, they will be reinforcing some of the very problems the legislation is intended to counteract. Equal value legislation was designed in part to interfere with the traditional allocation of labour in the marketplace. It recognizes that sex discrimination pervades the labour market and that women are paid less than men for work of equal value because employers can attract and retain women for lower wages, and it attempts to offer some redress. But the intent of the law would be seriously undermined if employers were permitted to defend inequity by saying, "I paid him more because he asked for more and I needed him." In short, citing a labour shortage or a skills shortage is, in effect, citing labour market forces as a justification for pay inequity – market forces that are themselves discriminatory. If employers were required to show that their reasons were not discriminatory in intent, this type of exception might be acceptable. After all, there are bound to be instances of real labour shortages where the best way to attract the necessary skills and to encourage more people to acquire them would be to offer higher wages than a job evaluation scheme might allow.

(5) Training

Most labour and women's representatives believe that provision should be made for training worker's representatives in the skills and knowledge required to negotiate pay equity plans with employers. The Trades Union Congress in Britain provides training for shop stewards and women's officers of affiliated unions, to educate them in the art of identifying and pursuing equal value claims. No such formal training is provided in Canada, although the Pay Equity Bureau in Manitoba and the Pay Equity Commission in Ontario are directed to provide education and assistance to parties negotiating or implementing pay equity. The Canadian Human Rights Commission also offers advice to complainants and employers, as does the Quebec Human Rights Commission. Nonetheless, it will be difficult for employee

representatives in the private sector to develop the skills and expertise required to negotiate the complexities of job evaluation without some training.

(6) Effect on Employment of Women

Some women's groups and trade unions are concerned that equal value legislation may have an adverse effect on women's employment. Statements by employer representatives like Judith Andrew of the Canadian Federation of Independent Business give those concerns legitimacy:

> Since the legislation will require significant pay increases for women, it is logical to assume that employers, looking for every efficiency in an increasingly competitive world will re-evaluate their staff requirements. Women may face layoffs and fewer new job opportunities (quoted in M. Crawford 1987, 167).

The evidence in support of this prediction is weak. Australia phased in equal pay for work of equal value between 1972 and 1975. During that time, women's wages rose by between 25 and 30 per cent, and Monica Townson says that "the number of new jobs for women increased by an average 3.6 per cent a year, while employment for men rose by an average of only 1.1 per cent a year." (quoted in M. Crawford 1987, 165). In an interview with a senior officer of the Advisory Conciliation and Arbitration Service (ACAS) in the United Kingdom last year, it was confirmed that a number of companies in Britain are opting for sub-contracting 'women's' work, such as cleaning, cafeteria services and secretarial duties, to avoid potential equal value complaints. The ACAS representative knew of one instance where hiring and recruitment policies had been "unofficially" altered to prevent the possibility of an equal value claim, but he did not believe that hiring policies generally have been affected by the introduction of complaint-based equal value legislation in 1984 (Conway 1986, 53).

The British and Australian experience may serve to reduce concerns regarding the recruitment and hiring of women, particularly given the recent introduction of employment equity legislation both federally and in Quebec. Even so, the effect on equal value principles of practices like sub-contracting and contracting out should be monitored carefully. This is especially true in Ontario, because of the gaps in private sector coverage, and in Manitoba, because of the absence of any kind of pay equity requirement on the private sector.

Several issues that concern women and trade unions have been omitted from this discussion because the legislation in all the jurisdictions has dealt with them satisfactorily. These include protection from reprisal of any kind for initiating a complaint or participating in pay equity negotiations or complaints, and the assurance that no wages will be reduced as a result of implementing pay equity. Also, issues highlighted elsewhere in the paper have not been repeated here (for example, job evaluation).

Issues and Concerns of Employers

Contrary to popular belief, not everyone in the business community is opposed to the principle of pay equity. To be sure, many businessmen and women agree with the concept in principle but believe, to a greater or less extent, that it is unworkable in practice. These include, for example, the Canadian Manufacturers Association, the Canadian Federation of Independent Business, the Canadian Organization of Small Business, the Personnel Association of Ontario, and the Canadian Chamber of Commerce.

Outright opposition to the principle of pay equity is difficult to gauge, first, because opposition to the equal value concept is unpopular in the present social and political climate and, second, because when employers were given the first real opportunity to present their views (during the consultations on the Ontario government's Green Paper on Pay Equity), the government stipulated that submissions were to be confined to comments on methods of implementation; the hearings were not to become a forum for debating the validity of the concept of pay equity. During those hearings, however, the Sudbury and District Chamber of Commerce and the Retail Council of Canada, among others, plainly stated their opposition to the principle (Clark, Cook and Dimma 1986, 3).

Whether employers are opposed to the concept or not, they know that it is coming, either by legislation or through collective bargaining; and they are well aware that it will have profound and lasting effects on the way they do business. However, even those groups that support the principle, such as the Canadian Association of Women Executives and the Ottawa-Carleton Board of Trade, have concerns about implementation. For or against, members of the business community generally share several concerns about implementing pay equity: the cost and its effect on competitiveness; the weaknesses of job evaluation and the potential for interference in the market allocation of labour; the potential for negative effects on collective bargaining; and the intrusion into business operations of large, expensive, arbitrary bureaucracies.

(1) Cost and its Effect on Competitiveness

There is no doubt that pay equity will increase costs. The real question, then, is not whether but by how much? The answer, needless to say, varies widely, depending on who is covered, whether the legislation calls for retroactive payments, whether a ceiling is placed on costs, as in Manitoba ($40 million for the public sector over four years) and, finally, on the extent to which women's work is undervalued under current pay structures. In the federal jurisdiction, retroactivity of awards has alternated between the date the complaint was filed and the date the Act came into force in March 1978. Between 1978 and 1984, 19 complaints were settled, "resulting in about $20 million in retroactive pay for about 4,600 workers and annual pay increases totalling $12 million in the first year after the settlements." (CHRC 1984, 1). In Ontario and Manitoba, retroactivity is not really an issue because equity adjustments are to be phased in according to a legislated schedule. A retroactive period of two years prior to the filing of a complaint has been suggested by the Equal Pay Coalition in Ontario, but it is likely

that settlements resulting from successful complaints will be retroactive to the date adjustments were supposed to have begun according to the schedule.

In framing equal value legislation, the governments of Manitoba and Ontario have tried to minimize the potential impact of costs by allowing pay equity adjustments of only 1 per cent of the previous year's total payroll.

Nonetheless, some employers assert that "higher wages without any rise in productivity would . . . push up prices across the board. That in turn would make Canadian goods less competitive at home and abroad." (Breckenridge 1985, 110-111). In addition, Paul Kovacs of the Canadian Manufacturers Association says that "the situation could also prompt Canadian subsidiaries of foreign companies to delay expansion plans, or even to transfer operations to a country free of such government interference as equal value laws." (ibid.). Monica Townson and other proponents of equal value legislation argue, however, that women should not be expected to "subsidize the profitability of business." (quoted in M. Crawford 1987, 165). As Townson has said,

> Small business spokespersons claim that hundreds of employers will be forced out of business if they have to give women higher wages. If that's true, then the implication is that small businesses can only survive and make a profit if they are allowed to go on paying women workers less than their work is worth (quoted in M. Crawford 1987, 165).

Quite apart from the fact that women cannot afford to subsidize business profits any longer, there is little evidence that dramatic damage to the economy, of the kind predicted by Kovacs, will occur. University of Toronto economist Morley Gunderson has said, for example, "most people would say that it hasn't sent the [Australian] economy for a loop." (quoted in McQuaig 1986) Australia is often used as an example in discussions of pay equity because to date it is the only jurisdiction in the world to have introduced pay equity on a broad scale in the private sector.

Closer to home, at least one company discovered that implementing equal value was not detrimental; on the whole, in fact, it had extremely positive results. Morguard Investments Limited, of Toronto, decided in 1984 to try job evaluation; because of the prevailing political climate, Morguard also decided to choose a system that included an equal value component. (The Liberal government, then a minority government being supported through an agreement with the NDP, had indicated its intention to proceed with pay equity.) The company spent $40,000 to evaluate 400 white collar jobs, 63 per cent of which were held by women. Another $15,000 was budgeted for the fall of 1985 to compare the white collar jobs to 200 blue collar jobs held by men. Through the job evaluation process, the company discovered that 16 per cent of its employees were receiving between $1 and $2,000 less than the firm's stated minimum salary and that 9 per cent were overpaid, including some female secretaries. These jobs were either assigned a higher rate of pay or the women were transferred to more senior positions.

Morguard consulted the market to assist in assigning wages when applying the equal value approach to job evaluation. A salary survey was conducted in similar industries (e.g., real estate) to locate benchmark jobs. The company was pleased to discover that it generally

paid more than the going rate when the value of benefits was taken into account. Paula Gradson, Morguard's personnel manager, estimates the "final cost of implementing the study's findings should be about a quarter of a million dollars." (Breckenridge 1985, 114).

In the final analysis, it must be accepted that implementing pay equity will be costly. Nor will the costs be low enough to escape notice; as Morguard president James Renehan has said, "Any time you increase expenses it does cut into profits." (ibid.). Women's groups and trade unions are aware of the potentially adverse effects of pay equity on business profits, but they are increasingly impatient with business representatives who disguised self-interest as public interest in arguing against pay equity. They are also tired of being paid inequitably for work of equal value.

(2) Job Evaluation

The weaknesses of job evaluation have been discussed—there is no perfect system. Most personnel consultants believe, however, that "a good system, applied by well-trained administrators, produces reasonable results." (McDougall 1985, 38). Employers have argued that "although job evaluation may establish an equitable wage structure within an establishment, its use is questionable because it fails to take into account the structure of external wage rates." (Niemann 1984, 68). Before addressing this concern, it is important to emphasize that governments are not requiring employers to use a particular job evaluation system. The systems they choose or negotiate must meet certain criteria, however. They must, for all intents and purposes, be factor-points systems; they must be free of sex bias; and they must allow for comparisons between manual and non-manual jobs. Once a complaint has been filed, however, if an employer's system is deemed unacceptable for any of these reasons, the monitoring agency may impose a system of its own choosing.

Managers, understandably, want to be able to link any internal wage structure determined by job evaluation to the external labour market. Yet it is precisely the external labour market, and the discrimination that exists in it, that the pay equity laws try to counteract. Equal value legislation simply introduces equal treatment of the sexes as a new element in determining the internal equity of wage structures (Steinberg 1985, 49). Proponents also argue that because the external market is skewed anyway, it is unlikely that improvements in internal equity will upset the supposedly delicate balance of supply and demand in the external market. As Helen Remick, Equal Employment Officer at the University of Washington says, "Salaries in larger firms are set by personnel technicians. In small firms, owners determine the going rate of pay for a job in a community, and then see if they can match it." (quoted in McDougall 1985, 39)

In short, employers are using a circular argument when they claim that inequity in the marketplace is a reason to continue inequity within the establishment (Niemann 1984, 68). In any event, the argument implies that the labour market exists somehow independent of industry—that unfettered forces of supply and demand are busy determining how many and what type of workers are needed. The fact is, of course, that employers play a large role in determining demand; if the demand for secretaries at $15,000 is changed because potential

suppliers of secretarial labour are unwilling to accept less than $20,000, the demand must and, over time, will adjust.

That adjustment need not take the form of reduced demand for secretaries: it may well occur such that the demand for other, overvalued workers is reduced because their labour is now too expensive relative to that of others. 'Women's' work has not been shown to be any more dispensable than 'men's' work. Is the male groundskeeper really more valuable than the female secretary? Are employers willing to reduce their demand for secretaries because their costs will increase and unwilling to contract out the work of the now relatively more expensive groundskeeper? Should women begin to train as groundskeepers, orderlies, garbage truck labourers and stock clerks instead of training as secretaries, hospital clerks, nursing attendants and cashiers? All of the 'male' jobs are better paid (T. Crawford 1986, E1). If women's pay is lower because the market has determined that their jobs are worth less than men's, the market may ultimately reveal the true value of women's work when women decide they do not want to do it any longer. Left to market forces, however, it would be generations before this happened. The argument that women will be kept in their current job ghettos by pay equity legislation rather than be encouraged to acquire the skills that the market rewards (when those skills are associated with men's jobs) lacks credibility and is impractical in the extreme. As Monica Townson has said,

> . . . in today's economy, can we seriously suggest that women should displace male workers if they want to get decent wages? And can we confidently expect that men are going to be willing to take on the women's jobs left vacant? If we really want to go this route to desegregation of the workforce (and eliminating the pay gap), 2.5 million women would have to change jobs with 2.5 million men. Close to 700,000 men would have to become secretaries and another 200,000 would have to become nurses. That hardly seems like a realistic solution to the problem (quoted in M. Crawford 1987, 165).

(3) Negative Effect on Collective Bargaining

Employers who engage in collective bargaining are concerned that the process will be undermined by legislated pay equity. They contend that legislated equal value negotiations cannot be integrated with collective bargaining because they introduce an "artificial process for determining value at least partially divorced from the market or bargaining strength between employers and employees." (Retail Council of Canada 1986, 15). The reasoning runs as follows: there is no point in negotiating wages with a bargaining unit that, based on its bargaining power, achieves a settlement that may subsequently be overturned by a pay equity commissioner who has decided that certain workers in that unit or in other units deserve more than the wage that was negotiated. Such a situation will make a "mockery of the collective bargaining process and lead to a serious deterioration in employer/employee relations in the province" (ibid.).

The argument is not really relevant because the manner in which pay equity is to be negotiated, as prescribed in the Manitoba and Ontario legislation, is such that the relative bargaining power of employees is not very important. The issues to be negotiated are the

selection or development of a job evaluation system and the schedule of adjustments required to achieve pay equity. The negotiations are to be conducted separately from bargaining on other issues. If employers meet the minimum criteria set out in the legislation in both jurisdictions, they cannot and will not be ordered to change the results arrived at through negotiation.

Ontario's complaint-based approach to compliance provides the only possibility that a negotiated settlement could be ruled unfair. This is because Ontario's law considers bargaining power an allowable exception once pay equity has been achieved. In fact, it is complaint-based legislation, such as the federal and Quebec laws, that contains the greatest potential to undermine collective bargaining. This is because complaints are filed *after* wages have been determined. Nonetheless, more employers favour legislation of this nature over the more aggressive legislative approach – collective bargaining notwithstanding.

Finally, employers' arguments in this area are undermined by the fact that trade unions – which, it is fair to assume, have at least an equal interest in protecting against the possible undermining of collective bargaining – are not in the least concerned that the process will suffer because of legislated pay equity (Ontario Federation of Labour 1986, 20).

(4) Intrusion of Bureaucracy

Employers are opposed to the idea of yet another bureaucratic requirement being added to the list of government regulations (McDougall 1985, 38). In addition, they believe that the money needed to set up and maintain monitoring agencies for pay equity could be better spent, as Judith Andrew of the Canadian Federation of Independent Business has suggested, "on providing women with educational programs to help them get ahead" (quoted in M. Crawford 1987, 167). Finally, they do not believe that bureaucrats have enough insight into the way business operates to apply the legislation fairly or reasonably. As Andrew puts it, "The pay equity wolf is a proposal for extensive and heavy-handed regulation swathed in sheep's clothing." Andrew goes on to say, "The proposed legislation [Ontario's] would leave business at the mercy of monitoring agency employees .... Such legislation would epitomize all that is unreasonable about ill-defined legislative requirements left for arbitrary interpretation by bureaucrats." (Andrew 1986, A5)

One may sympathize with employers about any additional red tape, but arguments couched in these exaggerated terms are difficult to accept. Employers under federal and Quebec jurisdiction are not compelled to comply with pay equity unless a successful complaint is launched. The private sector in Manitoba is not covered at present and, presumably, bureaucrats in the public sector are not opposed to being monitored by other public servants. Employers in Ontario, the only jurisdiction where the private sector is compelled to act, are not vocal in their opposition to other government regulations such as laws governing employment standards. Finally, no private sector employers need be concerned with a pay equity agency if they comply reasonably with the legislation. The phasing-in schedules, where legislation provides for them, cannot be described as rushed; in fact they are perceived as overly generous by most proponents of pay equity.

It will be evident that the concerns expressed by employers have been minimized to some extent in this discussion. There are two major reasons for this approach. First, pay equity is not only here to stay, but it is likely to spread to more and more jurisdictions; opposition to the principle of pay equity is fast becoming an impotent stance. Prince Edward Island and Yukon are both well on the way to enacting pay equity legislation, and other provinces, following the lead of Quebec, Manitoba and Ontario, will no doubt introduce pay equity legislation soon. The second reason for taking employer concerns less seriously is that experience with pay equity legislation in other countries has provided sufficient evidence to put some of them to rest.

In short, women want and deserve to be paid fairly. As Charles Davies, editor of *Canadian Business*, has said, "Proponents of pay equity are simply saying that it's possible to close the wage gap in a country where women's average earnings are about 64% of men's without crippling the economy. What's more . . . [other jurisdictions] . . . are proving that you can do it." (Davies 1986, 15)

Conclusion

Efforts to introduce pay equity are so recent that little conclusive data exist about the medium- and long-term effects of instituting pay equity. If we are to learn anything about the value of legislated pay equity as a cure for wage inequities, significant research in this and in related areas must be undertaken. Since implementation of equal pay for work of equal value has already begun in Canada, most of the research topics suggested here focus on implementing pay equity, rather than on the many alternative approaches to closing the pay gap.

Legislated pay equity offers a prime opportunity to study and test the viability of labour market theories based on assumptions about free, competitive labour market participants expressing tastes or preferences in exercising occupational choice, as well as the real influence of market forces in determining supply and demand in the labour market. There are at least two ways of approaching research in this area. First, economists may view legislated pay equity as interference in the labour market that reduces the impact of traditionally accepted variables. Alternatively, they may view legislated pay equity as interference that will enhance the effect of 'free' market forces by helping to reduce the influence of discrimination in structuring the labour market.

Many aspects of job evaluation need further research. Very few data exist on the extent to which Canadian firms are using job evaluation. A comprehensive survey is needed to determine how many organizations have job evaluation schemes in use; who is covered by them; the nature of schemes used; and the effects of job evaluation on wages and personnel policies over time. In addition, case studies of pay equity implementation in the public and private sectors, as well as in organizations with and without job evaluation systems in place at the time of implementation, may shed light on how implementation proceeds and what problems emerge. Long-term case studies would also prove useful in assessing the lasting

effect of pay equity based on job evaluation. It is important to know whether inequities begin to recur once equal value has been achieved.

Research into techniques of job evaluation is also needed. The influence of social values and perceptions about the value of specific work-related qualities on the choice of factors and their weights and benchmark jobs, as well as on the ranking of jobs in an organization's hierarchy, must be studied in greater depth.

The role of trade unions in implementing pay equity also needs to be examined. Specifically, research must address the issue of whether membership in a trade union improves the quality of negotiated pay equity deals for women in jurisdictions with prescriptive and complaint-based legislation, as well as those with no legislation. In addition, the extent to which trade unions are committed to the principle of equal value should be assessed. Studies comparing unions' public pronouncements in support of equal value with their actual activity and commitment at the local level are needed. The resistance of male workers to pay equity should also be studied. This could provide valuable insights into the potential for sustaining pay equity in the workplace over the long term. If male trade unionists insist on maintaining pay differentials, the effectiveness of legislation will be reduced significantly in the long run.

Finally, extensive research should be conducted into the effects of pay equity legislation on related employment equity legislation and programs such as affirmative action, subsidized education and training programs for women, and contract compliance policies. For instance, will the commitment of resources to employment equity programs be reduced as pay equity is implemented? Most women's groups favour the implementation of equal value in concert with a variety of employment equity programs. Many employers, given a choice, would prefer to implement programs other than pay equity for their women workers, believing that education and training will prove more beneficial to women in the longer term than will legislated pay equity.

These suggestions for research are only a few basic, but essential areas for study. The implementation of equal pay for work of equal value is supported by many but has been tested by few. Careful research will play a vital part in determining whether the pay equity concept survives in Canada or proves to be, as employers contend it will, an expensive experiment with limited lasting results.

APPENDIX A

THE HAY METHOD AND EQUAL PAY

CANADIAN HUMAN RIGHTS ACT AND EQUAL PAY GUIDELINES		HAY GUIDE CHART-PROFILE METHOD OF POSITION EVALUATION	
Core factor	Sub-factor	Sub-factor	Core factor
Skill	Intellectual skill	Knowledge and skill, however acquired, associated with practical procedures, specialized techniques and scientific disciplines	Know-How
		Conceptual or actual management knowledge and skill	
		Human relations skill	
	Physical skill	Physical skill associated with practical procedures and specialized techniques	
Effort	Intellectual effort	The independence, complexity, and novelty of the thinking required in the job	Problem Solving
	Physical effort	Intensity, frequency, and duration of physical effort or activity producing physical stress or fatigue	Working Conditions
Responsibility	Accountability for machines, finances, and other resources	Size of the organizational unit or function which the job affects as indicated by the resources (human or otherwise) involved	Accountability
	Accountability for work of other employees	The role of the job in bringing out the objectives of an organizational unit or function, including accountability for the work of others	
	Reliance on employees to perform the work	Nature of the organizational unit or function requiring management knowledge and skill	Know-How
Working Conditions	Noise, heat, cold physical danger, conditions hazardous to health, other conditions produced by the physical work environment	Intensity, frequency, and duration of unavoidable conditions in physical environment (environmental factors include for example: fumes, temperature, noise, vibration, dirt, dust, and unavoidable exposure to hazardous substances, equipment, and/or situations)	Working Conditions
	Isolation, mental stress, other conditions produced by psychological work environment	Intensity, frequency, and duration of sensory attention required during the work process	
		Intensity, frequency, and duration of exposure to factors inherent in the work process or environment, e.g., isolation, which increase the risk of such conditions as tension or anxiety	

Source: Hay Management Consultants Ltd.

APPENDIX B (PART 1)

JOB EVALUATION FACTORS DIVIDED INTO CATEGORIES

	Favours 'male' jobs			Favours 'female' jobs	
	Strongly	Weakly	Neutral	Weakly	Strongly
Section 1 **Factors with a time dimension**	• Length of Service • Experience	• Age • Qualifications • Education • Knowledge • Breadth of know-how • Depth of know how	• Training Period • Level of Skill		
Section 2 **Factors with a seniority dimension**		• Responsibility for cash or assets	• Confidential data/ information • Discretion • Responsibility • Effect of decisions • Supervision of subordinates • Accountability • Decision making • Planning		
Section 3 **Factors with a relationship dimension**			• Safety of others • Co-operation • Supervising • Creating new business • Communication • Co-ordination • Personal Appearance • Expression	• Contacts: internal/ external • Human relations responsibility • Public relations responsibility • Accuracy	• Caring
Section 4 **Factors with a physical activity dimension**	• Heavy lifting • Physical Hazards • Spatial • Unpleasant working conditions	• Technical Expertise • Responsibility for equipment • Physical skills • Physical effort • Responsibility for product • Responsibility for standards • Operational knowledge • Knowledge of machinery, tools and materials	• Safety of others • Stamina • Responsibility for materials • Versatility • Procedural know-how • Fatigue	• Monotony • Visual concentration • Scanning and location of details	• Dexterity • Typing and keyboard ability skills

	Favours 'male' jobs			Favours 'female' jobs	
	Strongly	Weakly	Neutral	Weakly	Strongly
Section 5 **Factors with a mental activity dimension**		• Numerical calculation • Knowledge • Numerical ability • Mathematical reasoning • Problem solving	• Initiative • Originality • Ingenuity • Judgement • Mental Effort • Complexity of job • Planning • Verbal comprehension • Verbal expression	• Concentration • Memory • Information ordering	
Section 6 **Factors with a sensory activity dimension**		• Differentiating Sounds	• Differentiating tastes • Differentiating smells • Visual concentration • Aesthetic appreciation • Tactile sensitivity • Artistic/musical creativity		

Source: UK Equal Opportunities Commission 1985.

APPENDIX B (PART 2)

JOB ANALYSIS FACTORS DIVIDED INTO CATEGORIES

	Favours 'male' jobs			Favours 'female' jobs	
	Strongly	Weakly	Neutral	Weakly	Strongly
Section 1 **Factors with a time dimension**	There are no factors in job analysis equivalent to the job evaluation factors set out in section 1 of the previous table, because these either represent level of ability rather than type of ability, or they are proxy for abilities included in their own right in other sections.				
Section 2 **Factors with a seniority dimension**	There are no factors in job analysis equivalent to the job evaluation factors in section 2 of the previous table. Seniority and responsibility are covered by the job content factors in section 5 (neutral activity).				
Section 3 **Factors with a relationship dimension**	A small number of the factors in sections 4 and 5 have a relationship dimension, but on the whole this is not given prominence in this inventory.				
Section 4 **Factors with a physical activity dimension**	• Spatial orientation • Explosive strength	• Dynamic strength • Gross body co-ordination	• Perceptual speed • Static strength • Stamina • Extant flexibility • Dynamic flexibility • Choice reaction time • Reaction time • Gross body equilibrium • Multi-limb co-ordination • Arm-hand steadiness • Rate control	• Selective attention • Time sharing • Speed of limb movement • Manual dexterity • Control precision	• Wrist/ finger speed • Finger dexterity
Section 5 **Factors with a mental activity dimension**		• Mathematical reasoning • Number facility • Visualization • Speed of closure	• Verbal comprehension • Verbal expression • Idea generation (ideational fluency) • Originality • Deductive reasoning • Inductive reasoning • Flexibility of closure	• Memorization • Problem sensitivity • Information ordering • Category flexibility	
Section 6 **Factors with a sensory activity dimension**	A small number of the factors in other sections have a sensory activity dimension, but on the whole this is not given prominence in this job analysis, perhaps because it relates to such a minority of jobs.				

Source: UK Equal Opportunities Commission 1985.

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